IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.4326 of 2006

Prafulla Bhikai Borkar Petitioner

Vs.

Ramchandra Pandurang Patil & ors. Respondents

Ms.A.S.Malvankar for petitioner.

CORAM: B.H.MARLAPALLE,J.

July 11, 2006.

P.C.

. Heard Mrs.Malvankar, the learned counsel for the petitioner.

. The petitioner succeeded in Special Civil Suit No.287 of 1997 in obtaining a decree in his favour as per the judgment and order dated 23/6/2000 passed by the learned Jt. Civil Judge, Senior Division at Kalyan. The agreement dated 3/3/1988 executed between the plaintiff and the defendants was treated as voidable and the defendants were directed to hand over possession of the suit land within a period of 15 days from the date of the order and the plaintiff

was directed to refund the amount of Rs.1,80,000/- to the defendants with interest at the rate of 12% per annum from 3/3/1988. The agreement dated 3/3/1988 was declared as cancelled consequently. Special Darkhast No.7 of 2005 came to be filed by the defendant no.1 - Ramchandra Pandurang Patil for recovery of the amount of Rs.3,50,000/- pursuant to the above decree. In the said Darkhast the petitioner filed an application praying for time and by the impugned order dated 16/6/2006 this application has been rejected by the executing Court.

. Admittedly during the last about six years the petitioner did not discharge his liability to refund the amount in its entirety and even though this Court was inclined to give about four weeks time to deposit the balance amount, the learned counsel for the petitioner, on instructions, stated that he has no resources and he will pay the amount in instalments and start the payments after about three months.

. Such a request cannot be entertained in a petition under Article 227 of the Constitution and the lower Courts must ensure that the decree passed is executed by the parties concerned.

. Hence the petition is rejected summarily.

(B.H.MARLAPALLE,J.)